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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/592,776 Confirmation No.: 8001
Applicants: LeRoux et al.
Filed: June 13, 2000
Title: SYSTEM AND METHOD FOR PAYMENT DATA PROCESSING
Art Unit: 3696
Examiner: Graham, Clement B.
Docket No.: 013647.00014
Customer No.: 33649

PETITION TO THE DIRECTOR UNDER 37 C.F.R. 1.181(a)(1)

Applicants hereby petition the Director of Art Unit 3600 to require the Examiner of the subject application to respond to the Appeal Brief filed today, March 8, 2010 in this case.

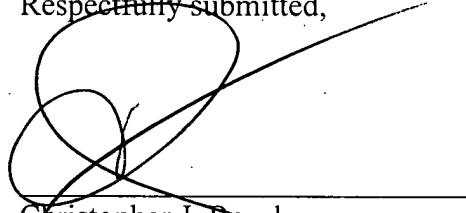
In response to an Office Action mailed October 2, 2008, a first Appeal Brief was filed on March 2, 2009. Instead of filing an answer to that Appeal Brief, the Examiner apparently agreed with the Applicants that the rejections were improper, and elected to re-open prosecution, but instead cited virtually identical rejections of all pending claims in an Office Action mailed September 1, 2009.

While M.P.E.P. 1207.04 does allow an Examiner to re-open prosecution in response to an Appeal Brief, the undersigned notes that this unusual procedure appears to be being used more frequently to repeatedly reopen prosecution instead of addressing the merits of the arguments in the Appeal Brief, particularly in certain art units, apparently as a means to delay prosecution, increase the costs of prosecution, and to prevent improper rejections from being reviewed and reversed by the Board of Patent Appeals and Interferences (BPAI). As the Applicants have already appealed once and prosecution has already been reopened once, there appears to be no legitimate basis for the Examiner to reopen prosecution again, which would only add delay and deprive Applicants of the right to appeal the rejection of the claims to the BPAI. The right to Appeal is provided by 35 U.S.C. 134, which does not provide for the Office to implement procedures that can be used to arbitrarily and capriciously deprive an Applicant of that right.

In addition, in the comments to the Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals, Fed. Reg. Vol. 73, No. 112, 32938 et seq. at 32955, the Office stated that a if "there are some examiners who in the opinion of an applicant are not doing their job, the applicant has the responsibility to call the matter to the attention of a Director in the involved Technology Center," and that "Technology Center Director without knowledge of difficulties experienced by an applicant is not likely to be able to take steps to improve the examination process." Applicants are filing this petition in response to this direction from the Office.

No fee is believed to be due, as this petition is filed pursuant to 37 C.F.R. 1.181(a)(1). The Commissioner is authorized to charge any additional fees that may be required or to credit any refund to Deposit Account No. 10-0096.

Respectfully submitted,



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Date: March 8, 2010

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